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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**
11

12 ARMANDO R. E.,

13 Plaintiff,

14 v.

15 KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

16 Defendant.
17

Case No. 2:22-cv-02907-GJS

**MEMORANDUM OPINION AND
ORDER**

18 **I. PROCEDURAL HISTORY**

19 Plaintiff Armando R. E.¹ filed a Complaint seeking review of the decision of
20 the Commissioner of Social Security denying his applications for a period of
21 disability and disability insurance benefits (“DIB”), and for Supplemental Security
22 Income (“SSI”) payments. The parties filed consents to proceed before a United
23 States Magistrate Judge (ECF Nos. 11, 13) and briefs (ECF Nos. 23 (“Pl.’s Br.”), 24
24 (“Def.’s Br.”), and 25 (“Pl.’s Reply”)) addressing the disputed issue in the case.
25 The matter is now ready for decision. For the reasons set forth below, the Court
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28 ¹ In the interest of privacy, this Order uses only the first name and middle and
last initials of the non-governmental party in this case.

1 finds that this matter should be remanded.

3 II. ADMINISTRATIVE DECISION UNDER REVIEW

4 On December 3, 2019, Plaintiff filed his applications for a period of disability
5 and DIB, and for SSI payments, alleging disability commencing on May 15, 2018.
6 (ECF No. 18, Administrative Record (“AR”) 17; *see also* AR 191-98, 199-205.)
7 Plaintiff’s applications were denied at the initial level of review and on
8 reconsideration. (AR 17, 82, 83, 112, 113.) A telephonic hearing was held before
9 Administrative Law Judge James P. Nguyen (“the ALJ”) on January 13, 2021. (AR
10 17, 34-67.)

11 On March 17, 2021 the ALJ issued an unfavorable decision applying the five-
12 step sequential evaluation process for assessing disability. (AR 17-29); *see* 20
13 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1). At step one, the ALJ determined
14 that Plaintiff has not engaged in substantial gainful activity since the alleged onset
15 date. (AR 19.) At step two, the ALJ determined that Plaintiff has the following
16 severe impairments: generalized anxiety disorder; major depressive disorder; and
17 panic disorder. (AR 19.) At step three, the ALJ determined that Plaintiff does not
18 have an impairment or combination of impairments that meets or medically equals
19 the severity of one of the impairments listed in Appendix 1 of the Regulations. (AR
20 21); *see* 20 C.F.R. pt. 404, subpt. P, app. 1. The ALJ found that Plaintiff has the
21 residual functional capacity (“RFC”) to perform a full range of work at all exertional
22 levels, as follows:

23 He can understand, remember, and carry out simple job instructions. He
24 can maintain attention and concentration to perform simple, routine and
25 repetitive tasks. He can have occasional interaction with coworkers and
26 supervisors, and no direct interaction with the general public. He can
work in an environment with occasional changes to the work setting and
occasional work-related decision making.

27 (AR 22.) At step four, the ALJ determined that Plaintiff is not able to perform his
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1 past relevant work as a service manager, an automobile sales person, and a door-to-
 2 door representative. (AR 27.) At step five, based on the testimony of the vocational
 3 expert (“VE”), the ALJ found that Plaintiff could perform other jobs existing in
 4 significant numbers in the national economy, including representative jobs such as a
 5 warehouse worker, a hand packager, and a laundry laborer. (AR 27, 53-54.) Based
 6 on these findings, the ALJ found Plaintiff not disabled through the date of the
 7 decision. (AR 28-29.)

8 The Appeals Council denied review of the ALJ’s decision on March 1, 2022.
 9 (AR 3-7.) This action followed.

11 III. GOVERNING STANDARD

12 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
 13 determine if: (1) the Commissioner’s findings are supported by substantial
 14 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
 15 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r*
 16 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). “Substantial evidence . . . is
 17 ‘more than a mere scintilla.’ It means -- and only means -- ‘such relevant evidence
 18 as a reasonable mind might accept as adequate to support a conclusion.’” *Biestek v.*
 19 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted); *Gutierrez v. Comm’r of*
 20 *Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal quotation marks and
 21 citation omitted).

22 The Court will uphold the Commissioner’s decision when “the evidence is
 23 susceptible to more than one rational interpretation.” *See Molina v. Astrue*, 674
 24 F.3d 1104, 1110 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §
 25 404.1502(a). However, the Court may review only the reasons stated by the ALJ in
 26 his decision “and may not affirm the ALJ on a ground upon which he did not rely.”
 27 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not reverse the
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Commissioner’s decision if it is based on harmless error, which exists if the error is “inconsequential to the ultimate nondisability determination, or if despite the legal error, the agency’s path may reasonably be discerned.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations omitted).

IV. DISCUSSION

Plaintiff raises the following issue challenging the ALJ’s findings and determination of non-disability: the ALJ failed to properly evaluate Plaintiff’s subjective symptom testimony. (Pl.’s Br. 2.) As discussed below, the Court agrees with Plaintiff and finds that remand is appropriate.

A. LEGAL STANDARD

In evaluating a claimant’s subjective symptom testimony, an ALJ must engage in a two-step analysis. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007); 20 C.F.R. § 404.1529(c). First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment that “could reasonably be expected to produce the pain or other symptoms alleged.” *Lingenfelter*, 504 F.3d at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). Second, if the claimant meets the first step and there is no evidence of malingering, “the ALJ can reject the claimant’s testimony about the severity of [his] symptoms only by offering specific, clear and convincing reasons for doing so.” *Id.* at 1036 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996) (internal quotation marks omitted)). At the same time, the “ALJ is not required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to the Social Security Act.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (citation and internal quotation marks omitted).

1 **B. ANALYSIS**

2 In the present case, the ALJ discounted Plaintiff's subjective complaints
3 because they "are not entirely consistent with the medical evidence and other
4 evidence in the record for the reasons explained in this decision" as the "medical
5 record does not demonstrate evidence of symptoms, objective medical
6 abnormalities, diagnoses, or treatment consistent with the severity of symptoms as
7 alleged" by Plaintiff. (AR 23.)

8 The ALJ summarized Plaintiff's testimony as follows:

9 He alleged that his ability to work was limited by anxiety and depression,
10 with symptoms of panic attacks, feelings of being overwhelmed, and
11 nervousness. [He] alleged that he had two severe panic attacks per week,
12 which involved feelings of doom and palpitations. He asserted that a
13 panic attack would last 2 hours[] if he did not take his medications. He
14 reported seeing a psychiatrist once every two months and seeing a
15 therapist twice per month. [He] indicated that his mother-in-law came
16 over to his home to watch his two daughters, whenever his wife was
17 away at work. He stated that he required assistance to perform activities
18 of daily living such as cooking, running errands, and driving more than
19 20 miles. He asserted that he spent his days watching television and
20 going for walks outside on his good days. He alleged that on his bad
21 days, with increased anxiety symptoms, he would stay in his room all
22 day. He alleged having three bad days per week.

23 (AR 23.)

24 Plaintiff contends that the ALJ discounted Plaintiff's subjective symptom
25 testimony for three reasons: (1) Plaintiff's mental status examinations were
26 indicative of lesser severity of symptoms (Pl.'s Br. 5); (2) his symptoms appear to
27 have improved and become stable, with conservative treatment involving
28 psychotherapy and routine medication management (Pl.'s Br. 6); and (3) Plaintiff's
29 reports of his daily activities to his medical providers indicate greater functional
30 capacity than he alleged at the hearing (Pl.'s Br. 9). He asserts that the ALJ failed to
31 provide specific, clear, and convincing reasons for discounting Plaintiff's subjective
32 symptom testimony and to identify the evidence that was inconsistent with his
33 complaints. (Pl.'s Br. 4.)

1 **1. Mental Status Examinations**

2 The ALJ opined that Plaintiff’s “mental status examinations demonstrated
3 only a few abnormalities, indicative of lesser severity of symptoms.” (AR 24). He
4 referenced mental status exams in the record that showed positive findings such as
5 an anxious and depressed mood, tearful affect, sad and anxious mood, and
6 congruent affect, but then noted that Plaintiff otherwise showed no abnormalities in
7 areas like speech, thought process, thought content, cognitive function,
8 concentration, judgment, and insight. (AR 24-25; citing AR 303-07, 321-25, 413-
9 15.)

10 While the lack of supporting medical evidence can be a factor in evaluating a
11 claimant’s subjective complaints, it cannot “form the sole basis for discounting pain
12 testimony.” *See Burch v. Barnhart*, 400 F.3d 676, 681 (C.D. Cal. Jan. 20, 2005);
13 *Bunnell*, 947 F.2d at 345 (“[O]nce the claimant produces objective medical evidence
14 of an underlying impairment, an [ALJ] may not reject a claimant’s subjective
15 complaints based solely on a lack of objective medical evidence to fully corroborate
16 the alleged severity of pain.”).

17 Here, the ALJ did not explain how a lack of abnormalities on a mental status
18 examination in areas such as speech, thought process, thought content, cognitive
19 function, concentration, judgment, and insight, were somehow inconsistent with
20 Plaintiff’s severe impairments of anxiety, depression, and panic disorder, or with his
21 subjective symptom testimony regarding the symptoms and limitations he
22 experiences as a result of those impairments.

23 Additionally, even on those occasions when Plaintiff showed normal thought
24 process and other positive areas on mental status examination, the treatment notes
25 also reflect that Plaintiff was having transient suicidal thoughts relating to loss of
26 control while driving (AR 322); obsessions or preoccupations with cleanliness;
27 having things in order; constantly repeating “now that I’m older” (AR 306, 415);
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1 and mood/affect “okay” with fair judgment/insight (AR 415). Other mental status
2 examinations that were not specifically referenced by the ALJ, reported Plaintiff to
3 have an anxious mood; and a mood that was anxious, frightened, and irritable. (AR
4 342, 751.) Moreover, several mental status examination treatment notes reflected
5 symptomatic complaints consistent with Plaintiff’s testimony, including complaints
6 of gait problems (due to weakness, fatigue, and lightheadedness); intermittent chest
7 pain/discomfort that may be anxiety related; ongoing sexual problems (AR 304,
8 342, 413); assertion that his “sleep brain will not shut off”; poor concentration with
9 multitasking; increased irritability; poor motivation; high degree of worry; difficulty
10 handling multiple demands; avoidant behavior; and panic attacks while driving (AR
11 322). Moreover, Plaintiff generally reported significant symptoms of depression,
12 anxiety, and panic disorder. (AR 747.)

13 The Court determines that on this record, the ALJ’s determination that the
14 medical evidence did not support Plaintiff’s subjective symptom testimony was not
15 a specific, clear, and convincing reason supported by substantial evidence for
16 discounting Plaintiff’s testimony. Moreover, even assuming this was a specific,
17 clear, and convincing reason to reject Plaintiff’s testimony, it cannot be the only
18 reason. Thus, the ALJ’s determination to discount Plaintiff’s subjective symptom
19 testimony for this reason rises or falls with the ALJ’s other grounds for discrediting
20 Plaintiff’s testimony. As seen below, those other grounds are insufficient as well.

22 **2. Conservative Treatment and Improvement**

23 The ALJ found that Plaintiff’s symptoms appear to have been improved by
24 and are stable with “conservative treatment modalities involving psychotherapy and
25 routine medication management.” (AR 24.)

26 Plaintiff argues that the stability of a condition does not undermine a
27 claimant’s allegations as to the intensity, persistence, or limiting effects of the
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1 symptoms, and reflects only that the symptoms are not getting worse. (Pl.’s Br. 6
2 (citations omitted).) The Court agrees.

3 Indeed, it is questionable whether the record reflects actual improvement or
4 conservative treatment. For instance, at a January 29, 2020, treatment visit, Plaintiff
5 reported feeling like he is making progress and that the medications are helping, but
6 the treating provider also noted that Plaintiff “has not gone out of his routine which
7 keeps [him] feeling calm and in control.” (Pl.’s Br. 6 (citing AR 25, 413).) A note
8 from an April 21, 2020, treatment visit, relied on by the ALJ as reflecting that
9 Plaintiff reported he was “generally doing okay,” also reflected that Plaintiff takes
10 Klonopin 1-2 times a week, when his anxiety becomes overwhelming. (AR 469.)
11 The ALJ also relied on therapy notes from May 19, 2020, where Plaintiff allegedly
12 reported ongoing progress and that he was using coping tools to manage his anxiety,
13 but also “only reported that he was ‘doing ok.’” (AR 25, 531.)

14 More recent records, not mentioned by the ALJ actually tend to reflect that
15 Plaintiff’s condition was worsening. (Pl.’s Br. 7 (citations omitted).) For instance,
16 the October 26, 2020, psychiatric treatment note from Nurse Practitioner Sonnia
17 Ahinasi (“NP Ahinasi”), documents that Plaintiff was having increased anxiety and
18 panic attacks daily from driving (AR 746); he endorsed irritable mood, decreased
19 sleep, indecisiveness, excessive worry or anxiety, difficulty controlling the worry,
20 restlessness, feeling keyed up or on edge, easy fatigability, difficulty concentrating,
21 mind going blank, irritability, muscle tension, sleep disturbance and panic; daily
22 panic attacks; intrusions, avoidance, negative cognitions/mood; and arousal
23 alteration. (AR 747.) The mental status examination reflected that his mood was
24 anxious, frightened, and irritable (AR 751) and NP Ahinasi diagnosed Mr. Espinoza
25 with depressive disorder, panic disorder, and generalized anxiety disorder. (AR
26 754.) His medications at that time included Klonopin, Trazodone, Sildenafil,
27 Duloxetine, Propranolol, and Amlodipine. (AR 754.)

1 Plaintiff notes that he sees a therapist twice a month and his psychiatrist every
2 two months. (Pl.'s Br. 8 (citing 307, 417, 491, 500, 531, 539, 569).) He argues that
3 psychotherapy and medication management is not conservative treatment for mental
4 disorders. (Pl.'s Br. 8 (citations omitted).)

5 Although the ALJ generally described Plaintiff's medication management as
6 "conservative," the record does not support this finding. Instead, it reflects that
7 Plaintiff's treating providers frequently adjusted Plaintiff's medications. For
8 instance, on February 16, 2018, he was started on Propranolol for anxiety, and
9 Lexapro was added on November 20, 2018; on November 25, 2019, the Lexapro
10 was stopped and he was started on Duloxetine and Clonazepam; on January 29,
11 2020, his Duloxetine was increased and Trazadone was added for insomnia on April
12 29, 2020; as of October 26, 2020, he "was on multiple mental health medications
13 such as [Klonpin], Trazodone, Duloxetine, and Propranolol"; and, he testified at the
14 hearing that he was started on Zoloft -- a new medication for him. (Pl.'s Br. 8-9
15 (citing AR 44, 307, 325, 342-43, 417, 492, 754).)

16 Additionally, the ALJ acknowledged Plaintiff's ongoing treatment for
17 persistent anxiety and depressive symptoms, panic attacks, low energy, decreased
18 concentration, irritability, fearfulness, excessive worrying, feelings of sadness, and
19 insomnia; mental status examinations reflecting sad and anxious mood, with
20 congruent affect; and diagnoses of generalized anxiety disorder; major depressive
21 disorder; and panic disorder. In addition to the previously described medication
22 changes, the ALJ also acknowledged that at least one of the medication adjustments
23 (a switch from duloxetine and Klonopin to escitalopram and alprazolam), was
24 "[d]ue to [Plaintiff's] reports of persistent depressive and anxiety symptoms"; and
25 Plaintiff's report that his "anxiety was manageable *if not going anywhere* unknown
26 or dark." (AR 24-25 (emphasis added).)

27 Based on the foregoing, the Court determines that the ALJ's determination
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1 that Plaintiff's treatment was conservative, and that he experienced improvement
 2 and stability in his symptoms with medication, is not supported by substantial
 3 evidence. Accordingly, this was not a specific, clear, and convincing reason to
 4 discount Plaintiff's subjective symptom testimony.

5 6 **3. Activities of Daily Living**

7 "Engaging in daily activities that are incompatible with the severity of
 8 symptoms alleged can support an adverse credibility determination." *Trevizo v.*
 9 *Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (citing *Ghanim v. Colvin*, 763 F.3d
 10 1154, 1165 (9th Cir. 2014)). "Even where those activities suggest some difficulty
 11 functioning, they may be grounds for discrediting the claimant's testimony to the
 12 extent that they contradict claims of a totally debilitating impairment." *Id.* (citing
 13 *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1225 (9th Cir. 2010); *Valentine v.*
 14 *Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009)). An ALJ may also
 15 rely on a claimant's daily activities to support an adverse credibility determination
 16 when those activities "meet the threshold for transferable work skills"; i.e., where a
 17 claimant "is able to spend a substantial part of . . . [his] day performing household
 18 chores or other activities that are transferable to a work setting." *Orn*, 495 F.3d at
 19 639. However, an ALJ "must make specific findings relating to the daily activities
 20 and their transferability to conclude that a claimant's daily activities warrant an
 21 adverse credibility determination." *Id.* (citation and alteration omitted). A claimant
 22 need not be "utterly incapacitated to be eligible for benefits, and many home
 23 activities may not be easily transferable to a work environment where it might be
 24 impossible to rest periodically or take medication." *Id.* (quoting *Fair v. Bowen*, 885
 25 F.2d 597, 603 (9th Cir. 1989)) (internal quotation marks omitted). Indeed, the Ninth
 26 Circuit has "repeatedly asserted that the mere fact that a plaintiff has carried on
 27 certain daily activities, such as grocery shopping, driving a car, or limited walking
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1 for exercise, does not in any way detract from [his] credibility as to [his] overall
2 disability.” *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

3 Here, the ALJ determined that Plaintiff’s daily activities as reported to his
4 medical providers indicate greater functionality than Plaintiff alleged at the hearing.
5 (AR 24.) Specifically, the ALJ noted the following alleged inconsistencies: on
6 August 20, 2019, Plaintiff reported that he injured his calf playing softball; on
7 January 29, 2020, he stated he was driving his daughter at night to church; on April
8 21, 2020, he stated he was at home with his two-year old daughter and his sixteen-
9 year old daughter, and that his mother-in-law was at his home for only about half the
10 week (which the ALJ found to be inconsistent with Plaintiff’s hearing testimony that
11 is “mother-in-law is here all the time” (AR 42)); on April 21, 2020, he also reported
12 that he continued to walk with his baby daughter every day, worked in the yard,
13 spent time on the computer, and stated he “was connected to his church”; on May
14 19, 2020, Plaintiff reported that his wife and stepdaughter were at home more often,
15 he was “enjoying having them home,” that “everyone was getting along,” and that
16 he continued to walk twice a day with his baby daughter, “which was calming”; and,
17 on October 26, 2020, he stated he took a daily walk for 45 minutes to an hour. (AR
18 24 (citations omitted).)

19 Plaintiff argues that the ALJ failed “to point out any discernible
20 inconsistencies between . . . Plaintiff’s hearing testimony and his statements in the
21 record that indicate he is capable of functioning in a competitive work
22 environment.” (Pl.’s Br. 10.) For instance, when questioned by the ALJ at the
23 hearing about the time Plaintiff’s mother-in-law spends in his home, Plaintiff
24 explained that the time she spends “varies when my wife sometimes stays home
25 depending on what’s going on, so she’s here when my mother-in-law is not here,”
26 and his mother-in-law “adjusts her schedule” to be there when his wife is not there.
27 (AR 42.) With respect to his daily walks, Plaintiff explained at the hearing in
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1 January 2021, that his symptoms “had been a little worse and he would take a walk
 2 on good days.” (AR 42, 47.) He further notes that many of his activities “are tools
 3 suggested by . . . [his] therapist to maintain a stable mood, i.e., ‘keeping a schedule,
 4 limiting watching news, doing physical activity daily, going outside daily, eating
 5 healthy, keeping health[y] sleep routine, etc.” (Pl.’s Reply 4.)

6 The Court finds that the ALJ did not explain *how* Plaintiff’s *limited* daily
 7 activities as reported to his providers -- even in combination -- contradict his hearing
 8 testimony such that his subjective symptom testimony should be discounted, or how
 9 those daily activities are transferable to a work setting. Neither does the ALJ point
 10 to any evidence showing that Plaintiff is able to perform sustained and continuous
 11 work for a substantial part of his day based on his limited daily activities, and the
 12 ALJ made no specific findings to support such a connection. Plaintiff’s admitted
 13 daily activities as reported to his medical providers fail to provide substantial
 14 evidence of inconsistencies in his subjective symptom testimony.

15 Accordingly, this was not a specific, clear, and convincing reason to discount
 16 Plaintiff’s subjective symptom testimony.

17 18 **C. CONCLUSION**

19 Where, as here, the ALJ fails to state legally sufficient reasons for discounting
 20 a claimant’s subjective complaints, a court ordinarily cannot properly affirm the
 21 administrative decision. *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 884-85 (9th
 22 Cir. 2006). The Court is unable to conclude that the ALJ’s errors in evaluating
 23 Plaintiff’s subjective complaints were “harmless” or “inconsequential to the ultimate
 24 non-disability determination.” *Brown-Hunter*, 806 F.3d at 492.

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V. REMAND FOR FURTHER PROCEEDINGS

Remand is appropriate, as the circumstances of this case suggest that further administrative proceedings could remedy the ALJ's errors. *See Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) ("Unless the district court concludes that further administrative proceedings would serve no useful purpose, it may not remand with a direction to provide benefits."); *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101, n.5 (9th Cir. 2014) (remand for further administrative proceedings is the proper remedy "in all but the rarest cases"); *Harman v. Apfel*, 211 F.3d 1172, 1180-81 (9th Cir. 2000) (remand for further proceedings rather than for the immediate payment of benefits is appropriate where there are "sufficient unanswered questions in the record").

VI. CONCLUSION

For all the foregoing reasons, **IT IS ORDERED** that:

- (1) the decision of the Commissioner is **REVERSED** and this matter **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with this Memorandum Opinion and Order; and
- (2) Judgment be entered in favor of Plaintiff.

IT IS SO ORDERED.

DATED: May 5, 2023



GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE